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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Florian Lichtenberg

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EXAMINER

SASAN, ARADHANA

ART UNIT

PAPER NUMBER

1615

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No. 10/501,395	Applicant(s) LICHTENBERG ET AL.	
	Examiner ARADHANA SASAN	Art Unit 1615	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 August 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-4, 6-15, 19, 21, 23, 25, 27 and 29.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Aradhana Sasan/  
Examiner, Art Unit 1615

/Humera N. Sheikh/  
Primary Examiner, Art Unit 1615

Continuation of 11. does NOT place the application in condition for allowance because:

Rejection under 35 USC § 112 - 2<sup>nd</sup> paragraph

Applicant amended claim 1 to delete the limitation of optionally having "one or more auxiliaries." Therefore, the scope of amended claim 1 is different from the scope of claim 1 as previously presented because auxiliaries are not optionally required in amended claim 1. Moreover, Applicant added claims 34 and 35, where auxiliaries are required (based on the closed language, i.e., the term "consisting"). New claim 34 restricts the process step whereas claim 1 is open to the utility of the process step. Since the scope of the claims has been changed, and was not presented previously, the amendments will not be entered. Therefore, the rejection under 35 USC § 112 - 2<sup>nd</sup> paragraph is maintained. Applicant argues that the Examiner did not include dependent claims 6 and 19 (that are directly or indirectly dependent upon independent claim 1) in this objection and that this objection of independent claim 1 is in error or the Final Office Action is incomplete. This is not persuasive because independent claim 1 was rejected due to the recitation of having optional auxiliaries. Claims 6 and 19 were considered (for examination purposes) as including the optional auxiliaries (since optional implies having or not having these auxiliaries), these claims were included in the art rejection and were not considered indefinite.

Rejection under 35 USC § 103(a)

Applicant argues that Zhou requires a propellant and is not relevant to either Zhou '561 or Applicant's claimed invention. This is not persuasive because Zhou is combined with Zhou '561 since both references are drawn to cleaning compositions and one of ordinary skill in the art would find it obvious to use various conventional dispensing means such as spraying a liquid cleaning composition (as suggested by Zhou) on a surface that are known in the art - as evidenced by the teaching of Zhou '561.

Applicant argues that the composition of Zhou '561 requires the critical inclusion of an anionic polymer and that the Examiner has no basis for destroying the invention of Zhou '561 by leaving out its crucial element of an anionic polymer. Applicant argues that when the Examiner tries to use Zhou '561 as the secondary rejection reference, the Examiner does not have any basis for her (or one ordinarily skilled in the art) to not also have to bring over the crucial element anionic polymer as another component or as a replacement for the alkanolamine of Zhou et al. - in either case, the result is not applicants' claimed invention. This is not persuasive because the primary reference, Zhou, does not require the incorporation of an additional anionic polymer. The secondary reference, Zhou '561, has the anionic polymer, but is relied upon solely for the teaching of a cleaning composition that can be sprayed on a surface without the presence of a propellant. Zhou teaches the limitations of claim 1 (i.e., the method of decontaminating a surface by applying a composition that is an effective virucide and contains the components required by claim 1). The deficiency in Zhou is that it contains a propellant. Zhou '561 is not relied upon for the teaching of the components of the disinfectant composition. It is emphasized that Zhou '561 is only relied upon for the teaching of applying a cleaning composition without the use of a propellant.

Applicant argues that the Examiner has not shown why one ordinarily skilled in the art would ignore a crucial part of the composition of Zhou '561 in the search for Applicant's claimed invention and that the it appears that the Examiner has incorrectly used forbidden hindsight in combining the two rejection references that form the obviousness rejection.

This is not persuasive because it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that the Examiner does not know what would, or would not, motivate one ordinarily skilled in the art and that the Examiner has not proven in the record that a known technique, a known method and predictable results are involved. Applicant argues that the Examiner does not know what one ordinarily skilled in the art would believe/know has a reasonable expectation of success. This is not persuasive because both references used in the obviousness rejection are drawn to methods of applying cleaning/disinfectant compositions to surfaces. One having ordinary skill in the art would look at these references as guidelines when researching methods of applying cleaning compositions. Since the references can be properly combined, one of ordinary skill in the art would find it obvious to remove the propellant of Zhou when applying cleaning composition that is not an aerosol.

Therefore, the rejection of 03/02/10 is maintained.